IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9773 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIGNESH VINODKUMAR SHAH

Versus

REGIONAL PASSPORT OFFICER

Appearance:

1. Special Civil Application No. 9773 of 2003

MR SHALIN N MEHTA for Petitioner No. 1

MR DN PATEL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 09/09/2003

ORAL JUDGEMENT

Rule. Service of rule is waived by learned advocate Shri N.J. Shah appearing for Sr. Standing

Counsel Shri D.N. Patel for the respondents. At the request made by the learned advocates, the petition is finally heard today.

2. The grievance, which has been ventilated by the petitioner in this petition, is with regard to not making correction of the petitioner's name in the passport, which has been issued to him by respondent No. 1.

3. The facts giving rise to the present petition, in a nutshell, are as under :

3.1 The petitioner, who is the son of Shri Arvindbhai Shah, was given in adoption by his father to the petitioner's uncle Shri Vinodkumar Shah. By virtue of the said adoption, which had taken place on 6.5.1984, now the name of the petitioner has been changed and the petitioner's current name is Shri Jignesh Vinodkumar Shah.

3.2 The petitioner wanted the said change to be effected in his passport (No. T-833283) and, therefore, he had approached respondent no. 1 with an application dated 15.3.2003 requesting to make necessary change in the passport. The said application was submitted alongwith an affidavit in support of the application in the prescribed form as required under the provisions of the Passport Rules, 1980.

4. It has been submitted by learned advocate Shri Shalin Mehta appearing for the petitioner that though ample evidence had been adduced by the petitioner to show that the petitioner was taken in adoption by his uncle Shri Vinodkumar Shah and his name has been changed from Jignesh Arvindbhai Shah to Jignesh Vinodkumar Shah, the respondent authorities have not taken any action in pursuance of his application dated 15.3.2003.

5. In pursuance of notice issued by this court, learned advocate Shri N.J. Shah has appeared for the respondent authorities and has submitted that as per the provisions of the Passport Manual, no change can be effected in the passport, which has already been issued to the petitioner, but if the authority is satisfied, a new passport with correct name can be issued to the petitioner.

6. It has been submitted by learned advocate Shri Shah that the petitioner has not produced a copy of the registered adoption deed and, therefore, no action has been taken by respondent no. 1 for issuing a new

passport to the petitioner with the correct name. Learned advocate Shri Shah has relied upon Chapter X of the Passport Manual, which pertains to issue of passport to adopted children. He has drawn my attention to Clause 2.2.1, which makes it obligatory on the part of the applicant to get the adoption registered by the office of the Registrar. According to him, a legally valid adoption, evidenced by a duly drawn up adoption deed duly registered with the office of the Registrar is required. As such a copy of the registration deed has not been submitted by the petitioner, it is not open to the respondent authority to issue a new passport with the changed name of the petitioner.

7. I have heard the learned advocates at length. In my view, ample evidence has been adduced before this court and before the respondent authority by the petitioner to show that the petitioner had been taken in adoption by his uncle Shri Vinodkumar Shah and, therefore, according to the provisions of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'the Act'), the petitioner has been deemed to be the son of Shri Vinodkumar Shah. It has been submitted by learned advocate Shri Mehta that according to the provisions of the Act, the deed of adoption is not required to be registered.

8. Clause 2.2.1 of Chapter X of the Passport Manual which has been relied upon by the respondent, contains the provisions with regard to "Adoption of a child living with its biological/natural parents by an Indian national living abroad or by a foreign national of Indian original living abroad."

9. It has been submitted by Shri Mehta that the petitioner's biological father and adopted father are Indian nationals and both are residing in India. Evidence to that effect has also been adduced by him before respondent No. 1.

10. In view of the above factual position, in my opinion Clause 2.2.1 of Chapter X of the Passport Manual shall not be relevant because biological as well as adoptive parents of the petitioner are neither foreigners nor living outside India.

11. Looking to the facts of the case, the objection raised by the respondents with regard to not getting the adoption deed registered does not appear to be proper for the reason that even according to the Passport Manual, it is not obligatory on the part of the petitioner to get

the adoption deed registered. Apart from the said fact, neither the provisions of the Indian Registration Act, nor the provisions of the Act make it obligatory to get the deed of adoption registered. As a matter of fact, at times adoption can be completed even without execution of any documents in writing.

12. Looking to the said fact, the respondent authority should not have denied issuance of a new passport with the current name of the petitioner, stating name of the adoptive father as the father of the petitioner.

13. I am sure that the respondent authorities shall look into the facts of the case and the legal provisions and shall issue a new passport to the petitioner incorporating the change in the name as required, preferably within a period of one month from the date of receipt of this order by the respondent authorities.

In view of the above direction, the petition stands disposed of as allowed. Rule is made absolute with no order as to costs. Direct service to respondent No. 1 is permitted.

(A.R. Dave, J.)

(hn)